

FILED

JAN 22 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

1 CURTIS LEE HENDERSON SR

2 H-43488

3 P.O. Box 3481

4 CORCORAN CALIF 93212

5
6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 CURTIS LEE HENDERSON, SR.,
11 PLAINTIFF,

12 VS.

13 J. PETERSON et al.,
14 DEFENDANTS.

CASE NO. C 07 2838 SBA (PR)
PLAINTIFF'S EX PARTE
MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER

15
16 TO THE HONORABLE SAUNDRA BROWN ARMSTRONG
17 UNITED STATES DISTRICT JUDGE, OF THE ABOVE ENTITLED
18 COURT. PLEASE TAKE NOTICE THAT THE PLAINTIFF MOVES
19 AN EX PARTE MOTION FOR PRELIMINARY INJUNCTION AND
20 TEMPORARY RESTRAINING ORDER. AND THAT THE
21 COURT NOTE THAT THE DEFENDANTS IN THIS ACTION HAVE
22 NOT BEEN SERVED AT THIS TIME AND FOR GOOD CAUSE
23 SHOWN HERE. PLAINTIFF BE RELIEVED OF DELIVERY OF THE
24 MOTION TO OPPOSING COUNSEL OR DEFENDANTS.

25 THE DEFENDANTS AND PERSON'S IN ACTIVE
26 CONCERT WITH THEM, HAVE THREATEND TO CONFISCATE THE
27 PLAINTIFF'S PERSONAL PROPERTY.

1 THE DEFENDANTS AGENTS CLAIM THIS ACT
 2 TO BE IN RESPONSE TO PLAINTIFF'S REFUSAL TO DOUBLE
 3 CELL. HOWEVER THE PLAINTIFF KNOWS THIS IS NOTHING
 4 MORE THAN RETALIATION FOR FILING ACTIONS AGAINST
 5 PRISON OFFICIALS. THE DEFENDANTS AGENTS HAVE
 6 STATED TO THE PLAINTIFF THAT THEY WERE ORDERED BY
 7 "SACRAMENTO" TO CONFISCATE ALL OF THE PLAINTIFFS
 8 PROPERTY.

9 THE OFFICE OF ADMINISTRATIVE LAW HAS
 10 DECLARED (IN OAL FILE ** CTU 06-0829-01 AND 06-0831-02)
 11 THAT THE DEPARTMENT OF CORRECTIONS AND REHABILITATION
 12 DOUBLE CELL HOUSING POLICY, IS AN UNDERGROUND
 13 REGULATION AND THEREFORE IN VIOLATION OF THE (APA)
 14 ADMINISTRATIVE PROCEDURE ACT.

15 NOW PENDING BEFORE THIS COURT IS THE
 16 CONSTITUTIONAL QUESTION SEEKING DECLATORY RELIEF
 17 THAT DOUBLE CELLING IS NOT MANDATED BY THE
 18 CONSTITUTION.

19 THE DEFENDANTS AGENTS ARE USING SUCH
 20 A CLAIM AS A RUSE TO CONFISCATE THE PLAINTIFFS
 21 PROPERTY WHICH WOULD DETER A PERSON OF ORDINARY
 22 FIRMNESS FROM EXERCISE OF CONSTITUTIONAL RIGHTS.
 23 NAMELY TO PREVENT THE PLAINTIFF FROM LITIGATING IN
 24 THIS HONORABLE COURT.

25 THE PLAINTIFF IS THUS BEING FORCED TO
 26 SURRENDER HIS PROPERTY OR SURRENDER LITIGATION, IN
 27 WHICH A TEMPORARY RESTRAINING ORDER IS NEEDED
 28 UNTIL THIS COURT DECIDES THE CONSTITUTIONAL QUESTION.

1 THE PLAINTIFF WILL SUFFER IRREPARABLE
 2 INJURY IF HIS PROPERTY IS CONFISCATED. ON THE ONE
 3 HAND IT WOULD BE IMPOSSIBLE FOR THE PLAINTIFF TO
 4 TAKE ANY MERITORIOUS LEGAL ACTION FORCING HIM TO
 5 WITHDRAW HIS CASE'S C 07-0909 SBA (PR); C072838 SBA (PR)
 6 NOW PENDING IN THIS COURT.

7 ON THE OTHER HAND, THE HARM SUFFERED
 8 IS THE ADVERSE CONSEQUENCES WHICH FLOW FROM THE
 9 PLAINTIFFS CONSTITUTIONALLY PROTECTED ACTION.
 10 INSTEAD OF BEING "denied" ACCESS TO THE COURTS, THE
 11 PLAINTIFF IS PENALIZED FOR ACTUALLY CONTINUING TO
 12 EXERCISE THAT RIGHT. THE INJURY IS THE RETALIATORY
 13 ACCUSATION'S CHILLING EFFECT ON THE PLAINTIFFS FIRST
 14 AMENDMENT RIGHTS SEE HINES V. GOMEZ 10A F.3d 265, 269
 15 (9TH CIR. 1997).

16 CONFISCATION OF THE PLAINTIFFS PROPERTY
 17 IS UNRELATED TO LEGITIMATE PENOLOGICAL OBJECTIVES.
 18 IN LEWIS V. CASEY 518 U.S. AT 355, 116 S.Ct 2174 THE
 19 COURT STATED:

20 "THE RIGHT TO FILE FOR LEGAL REDRESS IN COURTS IS AS
 21 ~~AS~~ VALUABLE TO A PRISONER AS TO ANY OTHER CITIZEN.
 22 INDEED, FOR THE PRISONER IT IS MORE VALUABLE.
 23 INASMUCH AS ONE CONVICTED OF A SERIOUS CRIME
 24 AND IMPRISONED USUALLY IS DIVESTED OF THE
 25 FRANCHISE, THE RIGHT TO FILE A COURT ACTION
 26 STANDS . . . AS HIS MOST "FUNDAMENTAL POLITICAL
 27 RIGHT, BECAUSE PRESERVATIVE OF ALL RIGHTS."
 28

1 THIS COURT HAS AUTHORITY UNDER Fed. R.
 2 CIV. P. 65(b) TO ISSUE A TEMPORARY RESTRAINING ORDER
 3 FEDERAL RULE OF CIVIL PROCEDURE 65(b) SHOULD BE
 4 APPLIED LIBERALLY IN FAVOR OF A TEMPORARY RESTRAINING
 5 ORDER AS A TEMPORARY RESTRAINING ORDER MAY BE
 6 GRANTED WITHOUT WRITTEN OR ORAL NOTICE TO THE ADVERSE
 7 PARTY OR THAT PARTIES ATTORNEY ONLY IF (1) IT CLEARLY
 8 APPEARS FROM SPECIFIC FACTS SHOWN BY AFFIDAVIT OR
 9 BY THE VERIFIED COMPLAINT THAT IMMEDIATE AND
 10 IRREPARABLE INJURY, LOSS, OR DAMAGE WILL RESULT TO
 11 THE APPLICANT BEFORE THE ADVERSE PARTY OR THAT
 12 PARTY'S ATTORNEY CAN BE HEARD IN OPPOSITION AND
 13 (2) THE APPLICANT'S ATTORNEY CERTIFIES TO THE COURT
 14 IN WRITING THE EFFORTS IF ANY, WHICH HAVE BEEN MADE
 15 TO GIVE NOTICE AND THE REASON SUPPORTING THE CLAIM
 16 THAT NOTICE SHOULD NOT BE REQUIRED.

17 THE PLAINTIFF'S AFFIDAVIT IS ATTACHED
 18 HERETO AS EXHIBIT A CERTIFIED BY THE PLAINTIFF IN
 19 WRITING PER. FED. R. CIV. P 65(b)

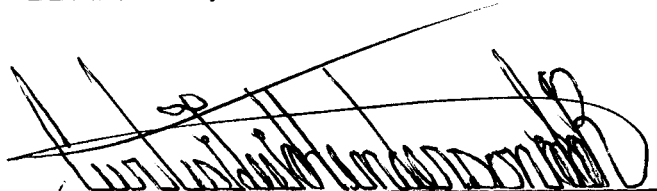
20 THE PLAINTIFF REQUEST THE COURT ISSUE
 21 A TEMPORARY RESTRAINING ORDER PREVENTING THE
 22 DEFENDANT'S FROM CONFISCATING THE PLAINTIFFS PROPERTY
 23 FORTHWITH AND THAT SAID ORDER BE A CONTINUING ONE
 24 UNTIL THE COURT DETERMINE THE ISSUE AS STATED IN
 25 THE COMPLAINT.

26 SAID ORDER SHOULD READ "THE DEFENDANTS
 27 THEIR OFFICER OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS,
 28 AND REHABILITATIONS,"

1 ITS AGENTS, SERVANTS, EMPLOYEES AND ATTORNEY'S AND
 2 ANY PERSONS IN ACTIVE CONCERT OR PARTICIPATION WITH
 3 THEM WHO RECEIVE ACTUAL NOTICE OF THE ORDER BY
 4 PERSONAL SERVICE OR OTHERWISE ARE HEREBY RESTRAINED
 5 FROM CONFISCATING ANY OF THE PLAINTIFFS PROPERTY
 6 NAMED HERE CURTIS LEE HENDERSON, SR. CDCR # H-43488
 7 AND IS BINDING UPON THE CALIFORNIA DEPARTMENT OF
 8 CORRECTIONS AND REHABILITATION, ITS AGENTS, SERVANTS,
 9 EMPLOYEES AND ATTORNEY'S AND ANY PERSONS IN ACTIVE
 10 CONCERT OR PARTICIPATION WITH THEM WHO RECEIVE
 11 ACTUAL NOTICE OF THE ORDER BY PERSONAL SERVICE OR
 12 OTHERWISE UNTIL FURTHER ORDER BY THIS COURT, SAID
 13 ORDER IS TO REMAIN IN EFFECT CONTINUALLY IT IS SO
 14 ORDERED.

15 I DECLARE UNDER PENALTY OF PERJURY THAT
 16 THE FORGOING IS TRUE AND CORRECT.

17
 18
 19 1/15/08
 20 DATED


 CURTIS LEE HENDERSON SR

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 28 //

EXHIBIT "A"

PLAINTIFFS CERTIFIED AFFIDAVIT

1
2
3 1). I CURTIS LEE HENDERSON SR, PLAINTIFF IN
4 THIS ACTION NOW PENDING BEFORE THE COURT. WAS INFORMED
5 BY THE DEFENDANT AGENT CORRECTIONAL OFFICER GONSALEZ
6 IN ACTIVE CONCERT WITH THE DEFENDANTS THAT HE WAS
7 INSTRUCTED BY HIS SUPERIORS IN SACRAMENTO TO
8 CONFISCATE MY PROPERTY.

9 2). I THEN INFORMED HIM THAT SUCH AN ACTION
10 WOULD BE UNCONSTITUTIONAL AS I HAVE PENDING LEGAL
11 CASES IN WHICH HAVING MY PROPERTY ALLOWS ME TO
12 LITIGATE THEM EFFECTIVELY.

13 3). HE THEN TOLD ME TO COME OUT OF MY CELL
14 BECAUSE HE WAS GOING TO TAKE EVERYTHING. DUE
15 TO MY REFUSAL TO DOUBLE CELL.

16 4). I TOLD HIM TO BE STRAIGHT WITH ME, THAT
17 THIS HAS NOTHING TO DO WITH DOUBLE CELL BUT IS TO
18 KEEP ME FROM MAINTAINING COURT ACTION'S.

19 5). HE OFFICER GONSALEZ, THEN STATED "YOU
20 GOT THAT RIGHT"

21 6). I REFUSED TO EXIT THE CELL. HE THEN
22 TURNED OFF MY ELECTRICITY TO THE CELL AND STATED
23 "AS SOON AS YOU COME OUT YOU LOOS EVERYTHING."

24 7). I THEN INFORMED HIM THAT I WOULD BE
25 NOTIFYING THIS COURT OF HIS ACTIONS BEING HARASSING
26 THREATENING AND OPPRESSIVE.

8). HE THEN TOLD ME TO "HAVE FUN TRYING TO DO THAT IN THE DARK"

9). I NOW FACE THE IMMEDIATE AND IRREPARABLE INJURY LOSS OR DAMAGE OF MY PROPERTY, AND MORE IMPORTANTLY THE DELIBERATE RETALIATION FOR THE EXERCISE OF A CONSTITUTIONAL RIGHT IS AT STAKE.

10). I HAVE ADDRESSED THIS ISSUE THROUGH DISCUSSION WITH THE APPROPRIATE STAFF MEMBER, AS SUCH GIVEN THE RIGHT AT STAKE NOTICE SHOULD NOT BE REQUIRED.

I DECLARE THIS TO BE MY CERTIFIED AFFIDAVIT UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA TO BE TRUE AND CORRECT AND IF CALLED TO TESTIFY ON THE MATTERS STATED HEREIN I WOULD DO SO.

1/15/08
DATED


CURTIS LEE HENDERSON SR

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NOTICE CERTIFIED
AFFIDAVIT EXHIBIT A
APPEAL TO PLAINTIFFS
PARTIAL MOTION FOR
ELIMINATE INJUNCTION
TEMPORARY RESTRAINING
ORDER

PROOF OF SERVICE

I, CURTIS LEE HENDERSON SR, DECLARE THAT I AM THE PLAINTIFF IN THE ABOVE ACTION MY ADDRESS IS P.O. BOX 3481 CORCORAN CALIF 93212 AND I SERVED THE DOCUMENT LISTED HERE PLAINTIFFS EX PARTE MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER ON THE FOLLOWING;

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
1301 CLAY ST SUITE 400S
OAKLAND CALIF 94612-5212

BY PLACING SAID DOCUMENT IN A SEALED ENVELOPE WITH POSTAGE PREPAID.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

1/16/08
DATED


CURTIS LEE HENDERSON SR

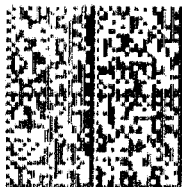
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CURTIS LEE HENDERSON SR.
H-43488
P.O. BOX 3481
CORCORAN CALIF 93212

CORCORAN STATE PRISON



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01/17/2008

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